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SUPREME COURT OF THE UNITED STATES.

No. 76.

JOHN N. AHL, APP'T,

vs.

ROSWELL B. JOHNSON.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF MINNESOTA.

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TERRITORY OF MINNESOTA,
Washington County, ss:

In chancery.

The bill of complaint of John N. Ahl, of Stillwater, in the county aforesaid, against Roswell B. Johnson, of said Stillwater, defendant.

To the Hon. David Cooper, judge of the district court in and for the second judicial district, in the Territory aforesaid, sitting in equity.

Humbly complaining, showeth unto your honor John N. Ahl, your orator, that Roswell B. Johnson, being or pretending to be seized and possessed of, or otherwise well entitled unto, a certain piece and parcel of land, with all and singular the hereditaments and appurtenances thereunto belonging, situate in Stillwater aforesaid, on or about the fifteenth day of June, in the year of our Lord one thousand eight hundred and fifty, entered into a treaty with your orator for the purchase of the said piece and parcel of land, with all and singular the hereditaments and appurtenances thereunto belonging, discharged from all incumbrances, at or for the price of one hundred and ninety dollars, with interest, to be paid on the first day of May, A. D. 1851.

And your orator further showeth unto your honor, that the said Roswell B. Johnson agreed to accept the said sum of one hundred and ninety dollars, with interest, together with other considerations as are hereinafter set forth, as a consideration for the said piece and parcel of land; and thereupon an agreement, in writing, was entered into, and signed by your orator and the said Johnson, respecting such sale and purchase, in the words and figures, or to the purport and effect following, that is to say: "Articles of agreement made this fifteenth day of June, A. D. 1850, between Roswell B. Johnson, of the village of Stillwater, Washington county, Minnesota Territory, party of the first part, and John N. Ahl, of the same place, party of the second part, as follows, to wit: the said Johnson agrees to sell and convey, by a good warranty deed of conveyance, containing covenants of warranty against all incumbrances, to the said Ahl the following piece and parcel of land, lying in the said village of Stillwater, and described as follows, to wit: beginning on the east side of Main street, on the south line of what is commonly called the Vail property in said village, thence northwardly along the east side of Main street forty feet, (40,) thence easterly in a line parallel with the said south line of the said Vail property to the lake, thence southerly along the shore of the lake to the south line of the said Vail property, thence westerly

to the place of beginning, (and being the south forty (40) feet of lot No. 10, in block No. twenty-eight, (28,) of said village of Stillwater, as the same was surveyed and platted by Harvey Wilson,) with all and singular the hereditaments and appurtenances thereunto belonging: Provided always, that the said Ahl pay or cause to be paid to the said Johnson the sum of one hundred and sixty-five dollars on the first day of October next, or the sum of one hundred and ninety dollars, with interest, on the first day of May, A. D. 1851. And the said Ahl agrees to purchase of the said Johnson the said premises above described, and agrees to pay for the same in manner and amount as above specified. And it is further agreed by and on the part of the said Ahl, that he will build a wharf upon the said lot next to the lake, suitable for steamboat landing, the whole forty feet upon the lake, so far as to extend one hundred and twenty feet from the east line of the street: Provided that the said Johnson makes a similar wharf, and of similar dimensions, on his lot, and adjoining the said Ahl's; and either party may commence the building of the same, but neither shall be compelled to continue and complete the said wharf, unless the other party shall also commence and continue the building of his own part of said wharf within a reasonable time, with reasonable diligence, and upon notice from the other party. And it is further agreed by and between the parties above named, that these articles of agreement shall refer to and be binding, as well upon the executors, heirs, and administrators of the said parties as upon the parties themselves.

"In witness whereof, the said parties have hereto set their hands and seals the day and year first above written.

"R. B. JOHNSON, [SEAL.]
"J. N. AHL, [SEAL.]

"In presence of
"M. E. AMES."

As by the said agreement, to which your orator craves leaves to refer when the same shall be produced, will appear. And your orator further showeth unto your honor, that at or about the time of the execution of said agreement, or since that time, the said R. B. Johnson hath delivered up possession of the piece and parcel of land aforesaid unto your orator, and your orator still remains in possession of the same. And your orator further showeth, that on or about the second day of July, A. D. 1850, after the execution of said agreement, your orator paid unto the said R. B. Johnson the sum of sixty (60) dollars, as part payment of the amount of said purchase money for said piece and parcel of land.

And your orator further showeth, that on or about the first of September, in the year of our Lord eighteen hundred and fifty, your orator discovered that the western boundary of said land, as shown and represented to your orator by the said Johnson, was not

the true western boundary of said parcel of land; but that said western boundary was several feet nearer the lake or eastern boundary of said parcel of land than the said Johnson had represented to your orator at the time of the execution of said agreement; wherefore, and by reason of the misrepresentation of the said Johnson in reference to the said western boundary, forasmuch as your orator had relied upon and placed faith in the representation of the said Johnson at the time of the execution of said agreement, your orator felt and knew that he had been greatly injured by such misrepresentation, and that said parcel of land was not so valuable as the amount of land shown to him by the said Johnson. And your orator further showeth, that he charged the said Johnson with such misrepresentation, whereupon the said Johnson admitted the same; and it was mutually agreed between the said Johnson and your orator, that referees should be selected, who should decide upon the amount of damage, if any, to which your orator was entitled by reason of such misrepresentation.

And your orator further showeth, that referees were mutually selected by the said Johnson and your orator, by virtue of such agreement; and said referees, after viewing the parcel of land aforesaid, and hearing the statements of your orator and the said Johnson, decided that said Johnson should allow your orator the sum of thirty (30) dollars and thirty-three (33) cents, as damages on account of such misrepresentation; whereupon said Johnson, on the seventh day of September, A. D. 1850, by his receipt by him signed, acknowledged to have received the sum of thirty (30) dollars and thirty-three (33) cents, as a further part payment of the purchase money upon the agreement hereinbefore recited for the sale and purchase of said piece and parcel of land.

And your orator further showeth unto your honor, that since the execution of the said agreement, your orator hath laid out large sums of money upon the said piece and parcel of land, and hath erected a valuable dwelling-house thereupon, and hath made other improvements thereon, thereby greatly enhancing the value of the premises aforesaid through and by means of the labor and sums of money bestowed, laid out, and expended thereupon by your orator.

And your orator further showeth, that he hath tendered and offered unto the said R. B. Johnson the whole sum of the balance of said purchase money, with the interest thereupon, which, by the agreement hereinbefore recited, after the payment and deduction aforesaid, was due or owing to the said Johnson, as the purchase money of the said parcel of land.

And your orator further showeth, that he is and hath always been ready and willing to perform his part of the said agreement, and upon having a warranty deed made to him, according to the terms of said agreement, to pay the residue of the said purchase money, or sum of one hundred and ninety dollars, and interest, to the said R. B. Johnson. And your orator hath demanded from the

said Johnson a warranty deed, according to the terms of said agreement; and your orator hoped that the said Roswell B. Johnson would have specifically performed his part of said agreement, as in justice and equity he ought.

But now so it is, may it please your honor, that the said Roswell B. Johnson, combining and confederating with divers persons at present unknown to your orator, whose names, when discovered, your orator prays he may be at liberty to insert herein, with apt words to charge them as parties defendant hereto, and contriving how to wrong and injure your orator in the premises, he, the said Roswell B. Johnson, refuses to perform his part of the said agreement, and at times pretends that he is entitled to more than the sum stipulated by said agreement, and at other times pretends and alleges that your orator has not performed his portion of the said agreement; whereas your orator charges the contrary thereof to be the truth, and that your orator has performed his part of the said agreement, so far as by said agreement and in equity he ought to perform the same; and that the said Johnson is entitled to no more than the balance due upon the sum stipulated in said agreement, and the interest thereon, and that your orator hath tendered and offered, and is ready and willing, and hath always so been, to pay said balance, and interest, upon having a proper title made out, and a proper conveyance of the said piece and parcel of land made and executed to your orator, according to the said agreement; and your orator charges that the whole of the residue of the purchase money of the said premises is now ready and unproductive in his hands, and that he is seriously embarrassed and injured by reason of not having a good and sufficient title, by warranty deed as aforesaid, to the said piece and parcel of land. All which actings, doings, and pretences of the said defendant are contrary to equity and good conscience, and tend to the manifest injury, wrong, and oppression of your orator in the premises.

In consideration whereof, and forasmuch as your orator is entirely remediless in the premises according to the strict rules of the common law, and can only have relief in a court of equity, where matters of this nature are properly cognizable and relievable: To the end, therefore, that the said Roswell B. Johnson and the rest of the confederates, when discovered, may, upon their several and respective corporal oaths, full, true, direct, and perfect answer make to all and singular the charges and matters aforesaid, as fully and particularly as if the same were hereinafter repeated, and they thereunto distinctly interrogated, and that not only as to the best of their respective knowledge and remembrance, but also as to the best of their several and respective information, hearing, and belief, and more especially that the said Roswell B. Johnson may in manner aforesaid answer and set forth.

1. Whether on or about the fifteenth day of June, A. D. 1850, he was not seized or possessed of, or otherwise well entitled to the

premises aforesaid, with the hereditaments and appurtenances thereunto belonging?

2d. Whether your orator did not, on or about the said fifteenth day of June, or when else, enter into a treaty with the said defendant for the purchase of the said premises, with the hereditaments and appurtenances thereunto belonging, discharged from all incumbrances, at or for the price or sum of one hundred and ninety dollars, with interest, or at some other and what price?

3d. Whether said defendant did not agree to accept the said sum of one hundred and ninety dollars and interest, or some other and what sum, as the consideration or price for the said premises?

4th. Whether thereupon such agreement in writing of such date, or of or to such purport and effect as hereinbefore in that behalf mentioned, was not duly entered into, and signed and sealed by the said defendant and your orator, or or how otherwise?

5th. Whether your orator did not, on or about the second day of July, A. D. 1850, and if not then, at some other time, pay or cause to be paid to the said defendant the sum of sixty dollars, or what sum, as a part of his said consideration or purchase money, or sum of one hundred and ninety dollars and interest for said premises?

6th. Whether said defendant did not, at the time of the execution of said agreement, deliver, or hath not since then delivered up possession of the said premises to your orator?

7th. Whether said defendant did not misrepresent to your orator the western boundary of said premises, or what misrepresentation did said defendant make in reference to said premises, or to the boundary thereof?

8th. Whether said defendant did not, by reason of said misrepresentation, or for some other and for what reason, agree to deduct or acknowledge to have received the further sum of thirty dollars and thirty-three cents from the purchase money or consideration stipulated by the said agreement to be paid by your orator?

9th. Whether your orator is not and hath not always been ready and willing to perform his said agreement, and on having a good and sufficient deed shown to him, according to the terms of said agreement, to pay the residue of said purchase money, or sum of one hundred and ninety dollars and interest?

10th. Whether said defendant doth not and why refuse to perform his part of the said agreement?

11th. Whether said defendant is not able to make a good and sufficient warranty-deed and title to the said premises, according to the tenor and intent of said agreement, and if not, why not?

12th. Whether your orator hath not required him so to do, and made such offer to him as in that behalf aforesaid, or that, or the like, or some, and what other purport and effect?

13th. Whether the whole of the residue of the purchase money of the said premises hath not been ready and unproductive in the hands of your orator for completing the said purchase from the

time the same ought to have been completed, or from some and what other time?

14th. Whether your orator has not much improved the said premises, and erected or caused to be erected a valuable dwelling house or other building thereon, and bestowed labor, and laid out and expended money thereupon, and greatly enhanced the value of said premises?

And that the said defendant may be decreed specifically to perform the said agreement entered into with your orator as aforesaid, and to make a good warranty-deed and title to the said premises; your orator being ready and willing, and hereby offering specifically to perform the said agreement on his part; and upon the said defendant making out a good warranty-deed of the aforesaid premises, and executing a proper conveyance thereof to your orator, pursuant to the terms of said agreement, to pay to the said defendant the residue of the said purchase money, or sum of one hundred and ninety dollars and interest; and that the said defendant may be restrained, by the order and injunction of this honorable court, from conveying, transferring, or in any way disposing of the title to the said premises to any person or persons save and except to your orator; and that your orator may have such other and further relief in the premises as to your honor shall seem meet and the nature of this case may require.

May it please your honor, the premises considered, to grant unto your orator not only the most gracious writ or writs of injunction of the Territory of Minnesota, issuing out of and under the seal of this honorable court, to be directed to the said Roswell B. Johnson, to restrain him from conveying, transferring, or in any way disposing of the said premises, or the title to the same, to any person or persons save and except to your orator, but also the most gracious writ or writs of subpœna of the Territory of Minnesota, to be directed to the said Roswell B. Johnson and the rest of the confederates, when discovered, thereby commanding them and every of them, at a certain day and under a certain pain therein to be specified, personally to be and appear before your honor in this honorable court, then and there to answer all and singular the premises, and to stand to, and perform, and abide such order and decree therein as to your honors shall seem meet and agreeable to equity and good conscience and your orator shall ever pray.

J. N. AHL.

F. K. BARTLETT,
Sol'r and Counsel.

TERRITORY OF MINNESOTA,
Washington County, ss:

Be it remembered that on this fourth day of November, A. D. 1851, personally appeared before me John N. Ahl, to me known as

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the complainant in the foregoing bill, and who signed the same, and being first duly sworn, he made oath that the foregoing bill of complaint is true as to all matters therein stated of his own knowledge, and as to all matters stated upon his information or belief he believes it to be true.

D. COOPER,
Judge 2nd Judicial District.

TERRITORY OF MINNESOTA,
County of Washington, ss:

To Harvey Wilson, esquire, clerk U. S. district court of the second jud'l dist.

It is ordered that the writ of injunction prayed for in the within bill of complaint be granted, the complainant having filed his bond, which is hereby approved: and further, that a subpœna issue, directed to the within-named defendant, requiring him to appear and plead, answer, or demur to the said bill of complaint within six weeks after service of said subpœna.

D. COOPER,
Judge 2nd Jud'l Dist.

At Chambers, Nov. 12th, 1851.

[Endorsed:] No. 6, June term, 1852. John N. Ahl v. Roswell B. Johnson. In chancery. Bill of complaint. Filed Nov. 12th, 1851. H. Wilson, clerk, by John S. Proctor, deputy. F. K. Bartlett, sol'r for pl'ff.

Know all men by these presents, that we, John N. Ahl, of the county of Washington, and Alexander Wilkin, of the county of Ramsey, and Territory of Minnesota, are held and firmly pledged and bound unto Roswell B. Johnson, of Stillwater, in said county, in the sum of two hundred and fifty dollars, to be paid to the said Johnson, to the payment of which well and truly to be made we do bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, dated this sixth day of November, in the year of our Lord one thousand eight hundred and fifty-one.

The condition of this obligation is such, that whereas the above bounden John N. Ahl has filed his bill of complaint against the said Roswell B. Johnson, and prayer for an injunction therein, issuing out of the honorable district court of the second judicial district, in the Territory aforesaid, to restrain the said Johnson from alienating a certain piece or parcel of land situate in said Stillwater. Now, therefore, if the above bounden John N. Ahl shall pay or cause to be paid all and singular the sums, if any, decreed by said court to be paid by him to the said Johnson upon

the final decree, after hearing said bill of complaint, then this obligation shall be void; otherwise to remain in full force and virtue.

J. N. AHL, [SEAL.]
ALEXR. WILKIN. [SEAL.]

Signed, sealed, and delivered
in presence of

F. K. BARTLETT, witness to signature of J. N. Ahl.
J. VAN ETTEN, witness to signature of Alexander Wilkin.

[Endorsed:] No. 6, June term, 1852. John N. Ahl vs. Roswell B. Johnson. Pltff's bond of indemnity. Filed Nov. 12, 1851. H. Wilson, clk., by Jno. S. Proctor, deputy.

Writ of Injunction.

TERRITORY OF MINNESOTA,
Washington county, ss:

Before the district court in and for the second judicial district, sitting in equity.

The United States of America to Roswell B. Johnson, greeting:

Whereas it has been represented to us, sitting in equity, on the part of John N. Ahl, of Stillwater, in the county of Washington, complainant, that he hath lately exhibited his bill of complaint in our said court against you, the said Roswell B. Johnson, defendant, to be relieved touching the matters therein contained; in the name of the United States, we firmly enjoin and command you, that from and immediately after your receipt or notice of this our writ, that you do not sell, transfer, convey, or otherwise alienate, or in way dispose of the premises in said bill of complaint mentioned, or the title to the said premises described in said bill of complaint, as follows, to wit: "The following piece and parcel of land lying in the said village of Stillwater, and described as follows, to wit: beginning on the east side of Main street, on the south line of what is commonly called the Vail property, in said village, thence northwardly along the east side of Main street forty feet, (40,) thence easterly in a line parallel with the said south line of the said Vail property to the lake, thence southerly along the shore of the lake to the south line of the said Vail property, thence westerly to the place of beginning, (and being the south forty (40) feet of lot No. 10, in block No. twenty-eight, (28,) of said village of Stillwater, as the same was surveyed and platted by Harvey Wilson,) with all and singular the hereditaments and appurtenances thereunto belonging."

This process is directed to the sheriff of the county of Washington, and he is commanded to serve and execute the same upon the said defendant, and to make return of his proceedings hereon and

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of this writ to our said court on the second Monday of May next, being the next ensuing term of our said court.

Witness the Hon. David Cooper, judge of our district court in and for the second judicial district of the Territory of Minnesota, sitting in equity at Stillwater, in the county of Washington, on this twelfth day of November, in the year of our Lord one thousand eight hundred and fifty-one.

[SEAL.]

HARVEY WILSON, *Clerk.*
By JOHN S. PROCTOR,
Deputy Clerk.
F. K. BARTLETT,
Sol'r and Counsel.

[Endorsed:] John N. Ahl v. Roswell B. Johnson. In chancery. Writ of injunction. Filed Nov. 29, 1851. Harvey Wilson, clerk, by Jno. S. Proctor, deputy.

TERRITORY OF MINNESOTA,
County of Washington, ss:

I hereby certify and return, that on this fourteenth day of November, A. D. 1851, I served the within upon the said Roswell B. Johnson, by giving him a true copy thereof in hand personally.

WM. C. PENNEY,
Sheriff of the County of Washington.

Fees—Service of writ	$1 00
Copy "	15
One mile travel	10
	1 25

TERRITORY OF MINNESOTA,
Washington County, ss:

Before the district court in and for the second judicial district, sitting in equity.

The United States of America to Roswell B. Johnson, greeting:

In the name of the United States, we command you, that you personally appear before the judge of our district court in and for the second judicial district, sitting in equity, and plead, answer, or demur to a bill of complaint exhibited against you in our said court by John N. Ahl, within six weeks after the service of this subpœna upon you, and to do further and receive what our said court shall have considered in that behalf. And this you are not to omit, under the penalty of two hundred and fifty dollars.

This process is directed to the sheriff of the county of Washing-

ton, who is hereby commanded to serve the same upon the said Roswell B. Johnson, according to law, if to be found in his county, and due return of this writ and your proceedings hereon to make to this court on Monday, the first day of December next.

Witness the Hon. David Cooper, judge of the second judicial district of said Territory, at Stillwater, in the county of Washington, on this twelfth day of November, in the year of our Lord one thousand eight hundred and fifty-one.

[SEAL.]

HARVEY WILSON, *Clerk.*
By JNO. S. PROCTOR,
Deputy Clerk.
F. K. BARTLETT,
Sol'r and Counsel.

TERRITORY OF MINNESOTA,
County of Washington, ss:

I do hereby certify and return, that on this fourteenth day of November, A. D. 1851, I served the within subpœna personally upon the within named Roswell B. Johnson, by giving him in hand a true copy of the same, and by also delivering to the said Johnson a true copy of the bill of complaint in the said subpœna mentioned.

WM. C. PENNEY,
Sheriff of the County of Washington.

Fees—Service of writ		$1 00
Copy "		15
One mile travel		10
		1 25

[Endorsed:] John N. Ahl v. Roswell B. Johnson. In chancery. Subpœna. Filed Nov. 29, 1851. Harvey Wilson, clerk, by Jno. S. Proctor, dep'ty. F. K. Bartlett, sol'r.

TERRITORY OF MINNESOTA,
County of Washington, ss:

The district court in and for the county of Washington in the second judicial district.

The answer of Roswell B. Johnson, defendant, to the bill of complaint of John N. Ahl, complainant.

This defendant now, and at all times hereafter, saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereto, or unto so much or such parts thereof as this defendant is advised is material for him to make answer unto, he answers and says, he admits that on the fifteenth day of June, in the year A. D. 1850, he (this defendant)

was and still is seized, in fee simple, and possessed of the said premises mentioned in the bill of complaint, viz: that piece or parcel of land lying in the village or town of Stillwater, in said county and Territory, described as follows, to wit: "Beginning on the east side of Main street, on the south line of what is commonly called the Vail property in said village, thence northwardly along the said east line of Main street forty (40) feet, thence easterly in a line parallel with the said south line of the said Vail property to the lake, thence southerly along the shore of the lake to the south line of the said Vail property, thence westerly to the place of beginning, and being the south forty (40) feet of lot (No. 10), in block No. twenty-eight (28), of said village of Stillwater, as the same was surveyed and platted by Harvey Wilson, with all and singular the hereditaments and appurtenances thereunto belonging," as set forth and stated in the written agreement set out and contained in the bill of complaint.

And this defendant, further answering, admits that it is true the complainant did, on or about the said fifteenth day of June, in the year A. D. 1850, enter into a negotiation with this defendant for the purchase of the aforesaid piece or parcel of land, with all the hereditaments and appurtenances thereunto belonging or appertaining, discharged from all incumbrances, at the price and sum of one hundred and ninety dollars, with interest, to be paid on the first day of May, A. D. 1851; and defendant admits that he agreed to accept the said sum of one hundred and ninety dollars, with interest, if paid on the said first day of May, as the price and consideration for the said premises, and to sell and convey the same to complainant by a good warranty-deed of conveyance, containing covenants of warranty against all incumbrances, provided that complainant paid or caused to be paid to defendant said sum of one hundred and ninety dollars and interest, on the first day of May aforesaid.

And defendant further admits, that an agreement was made and entered into in writing by and between the complainant and defendant, by them signed and sealed in duplicate form, and dated on the said fifteenth day of June, A. D. 1850, containing the terms and conditions of their negotiation for the purchase and sale of said premises, and a copy of which agreement defendant believes and admits is truly set forth and contained in complainant's bill.

And defendant further admits, it is true that complainant did, some time in the month of July, A. D. 1850, pay defendant the sum of sixty dollars, as stated in the said bill, by the sale of a wagon which defendant purchased from complainant at that price; and defendant further says, that he expressly denies that he ever gave complainant any possession of the said premises whatever, as stated in the bill of complaint, or that he ever consented to complainant taking possession of the same in any manner, as stated in the said bill, until he, the complainant, should fully pay defendant the said sum of one hundred and ninety dollars purchase or consideration

money therefor, with interest, according to the terms of said agreement, in writing, except and save for the purpose of building a wharf thereon, because defendant says that he did not so agree to do, and never intended to deliver up possession of the same to complainant, until complainant paid defendant the full sum of one hundred and ninety dollars purchase money, together with the interest thereon, according to the terms of said written agreement.

And defendant expressly denies making any and all misrepresentations whatever, as stated and charged in the bill of complaint, concerning the boundary line or lines of said premises, and fully denies that complainant was ever in any way injured or deceived by any representations whatever of defendant's concerning the western line or other boundary of said premises, as is stated in the said bill of complaint, because defendant says that he never did make any representations whatever to complainant concerning the boundaries of said lot or premises, except such as were based upon and in strict accordance with the official survey and plat of said village or town, and save such representations as were strictly true in fact, which then was and is on record in the office of register of deeds of Washington county, in which the premises are situated; and that complainant examined the map of said town and record thereof for himself, and knew quite as well or better about the real locality of said premises at that time than this defendant; and defendant expressly denies that he ever admitted making any such misrepresentations whatever concerning the boundaries of said premises, as is charged in the bill of complaint, and expressly denies that complainant was ever in any way deceived or injured by any representations made by defendant concerning the boundaries of said premises, or that complainant had ever any just cause of complaint therefor.

But defendant admits that at or about the time stated in the bill of complaint complainant did express some dissatisfaction concerning the said western boundary line of the said premises, and did assert that he (complainant) had been mistaken in relation to the same; and defendants admits that for the purpose of inducing complainant to pay for the same, and to act in good faith, according to the terms of said agreement in writing, and to satisfy the said complainant in relation to the same, and for the purpose of cultivating and sustaining friendly feelings and relations with complainant as a citizen and neighbor in the same community where both reside, defendant did concede and agree to refer to referees or disinterested persons to be selected, and who were selected by complainant, the matter to decide whether defendant should or ought to make any allowance or deduction from the price and sum of one hundred and ninety dollars, and interest, agreed to be paid as the price and consideration money for the said premises.

And defendant admits that the said referees to whom the same was referred, upon the representations and statement of complainant, did determine that defendant should allow and deduct the said

sum of thirty dollars and thirty-three cents from the price and amount of consideration money to be paid by complainant for the premises, and to which defendant admits that he asserted without any consideration whatever therefor, except to preserve friendly feelings and relations with complainant as a neighbor, and to induce him to pay the residue and balance of the said consideration or purchase money, according to the terms of his agreement in writing; but defendant denies that he was or is under any legal obligation or in equity or conscience bound to make any such allowance or deduction from the price stipulated and agreed to be paid by the complainant as purchase or consideration money for said premises.

And defendant fully admits that complainant has made improvements upon the said premises by erecting a dwelling-house thereon, and thereby greatly enhanced and increased the value of the premises at the time, and as stated in the said bill; but defendant expressly denies that any such improvements were made or house built by complainant by or with the consent or permission of the defendant, or that complainant had any right whatever to so improve or build upon the premises. And defendant, further answering, says that he expressly denies all the allegations in the said bill, in whatever part of the bill they are found, stating that complainant hath always been ready and willing to perform his part of the said agreement for the purchase of said premises, and to pay the purchase money for the same, according to his agreement so to do, and expressly denies that complainant has ever performed or offered to perform his part of said agreement, or in any respect complied with its conditions and terms, as he was legally and in equity bound to have done by the terms thereof.

But, on the contrary, the defendant avers the fact to be, that at the time the said sum of one hundred and ninety dollars, and interest, as the purchase money of the said premises, became and was due and payable to defendants, he called upon complainant and demanded of him the same, and at the same time told the complainant that he was ready and willing to execute and deliver to him a good warrantee deed of the premises, in strict compliance with the terms of his agreement, upon being paid the balance of said sum of purchase money, which complainant refused to pay, alleging, as an excuse, that he had not the means to pay it with; and defendant further says, that at different times between the first day of May, A. D. 1851, (after the said purchase money became due from complainant to him,) and up to the middle of the month of October, in the same year, he repeatedly called upon the complainant, and informed him of his ability and readiness to execute and deliver to complainant a good warranty deed of conveyance of the premises strictly according to the terms of their agreement, and offered so to do upon the payment of the said sum of purchase money, and urged complainant to pay the same, which he refused to do on every occasion when a demand was so made, and

at all other times, sometimes alleging that he had not the means of paying it; and at other times, that he desired to make some different and new bargain with defendant concerning the payment for the premises, which defendant declined doing; and defendant further says, that he has suffered great pecuniary embarrassment and injury in his circumstances and business, from the neglect and refusal of the complainant to perform his part of said agreement, and refusal to pay said sum of money.

But defendant admits that on or about the first of November, A. D. 1851, about the time of filing complainant's bill, Frederick K. Bartlett, esq., the complainant's solicitor, did demand from defendant a warranty deed of conveyance of said premises to complainant, and offered to pay defendant a sum of money, which, he informed defendant, was the balance of the said sum of one hundred and ninety dollars, and interest at seven per cent., upon defendant's executing and delivering such a deed of conveyance to complainant; but what sum of money was so offered or intended to be offered upon such condition, defendant does not in fact know, save from the statement of complainant's solicitor, and cannot state; and whether said moneys or any sum of money is now ready in the hands of complainant for that purpose, and unproductive, defendant does not know, but does not believe such to be the fact.

And defendant, further answering, denies all and all manner of fraud, actings and doings, contrary to equity and good conscience, charged in the bill of complaint against him, in whatever part thereof the same is found, either expressed or by implication, and all unlawful combination and confederacy in the said bill charged; without that any other matter or thing material or necessary for this defendant to make answer unto, and that herein or hereby well or sufficiently answered unto, confessed or avoided, traversed or denied, is true, to the knowledge or belief of this defendant; all which matters and things this defendant is ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in that behalf most wrongfully sustained.

R. B. JOHNSON.
AMES & NELSON,
Solicitors, and Counsel for Defendant.

TERRITORY OF MINNESOTA,
County of Washington, ss:

Be it remembered that on this twenty-second day of January, A. D. 1851, personally came before me Roswell B. Johnson, personally known to me to be the defendant in the foregoing answer, and who signed the same; and being by me first duly sworn, upon oath says, that the foregoing answer is true as to all matters therein stated of his own knowledge, and that those matters stated upon his information or belief he verily believed to be true.

R. B. JOHNSON.

Subscribed and sworn to before me, the 22d day of January, A. D. 1852.

HARVEY WILSON,
Clerk District Court, Wash. County, M. T.

[Endorsed:] Washington co. dist. court. In chancery. John N. Ahl, complainant, vs. Roswell B. Johnson, defendant. Answer. Filed Jan. 22, 1852. H. Wilson, clerk. Filed by order of the court, June 23, 1852. H. Wilson, clerk. Ames & Nelson, def'ts sol'r and counsel.

In and before the district court in and for the county of Washington, sitting in chancery.

TERRITORY OF MINNESOTA,
Washington County, ss:

JOHN N. AHL, complainant,
v.
R. B. JOHNSON, defendant.

The replication of J. N. Ahl, complainant, to the answer of Roswell B. Johnson, defendant.

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, saith that he will aver his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied to by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

F. R. BARTLETT,
Sol'r for Compt.

Served a true copy of the above upon M. E. Ames, one of the sol'rs for def't, on 30th day of June, A. D. 1852, by delivering the same to him in hand.

F. R. BARTLETT,
Sol'r for Compt.

[Endorsed:] John N. Ahl v. Roswell B. Johnson. In chancery. Replication. Filed June 30, 1852. H. Wilson, clerk. F. R. Bartlett, sol'r.

DISTRICT COURT,
Washington County.

JOHN N. AHL, complainant,
vs.
ROSWELL B. JOHNSON, defendant. } In chancery.

WASHINGTON COUNTY, *ss:*

Be it remembered that on this sixteenth day of March, A. D. 1853, William Holcombe came personally before me, and was by me duly sworn to faithfully, honestly, truly, and impartially perform the duties assigned him, and for which he was appointed and commissioned in the above suit in chancery, according to the best of his understanding, knowledge, and ability.

C. D. GILFILLAN,
Notary Public in and for Washington County, M. T.

[Endorsed:] Wash. co. dist. court. In chancery. John N. Ahl, comp't, vs. Roswell B. Johnson, def't. Certificate of special master's oath. Filed March 21, 1853. H. Wilson, clerk.

JOHN N. AHL, complainant,
vs.
ROSWELL B. JOHNSON, defendant. } In chancery.

Depositions of witnesses produced, sworn, and examined in a certain case depending and at issue in the district court in and for the county of Washington, in the Territory of Minnesota, sitting in chancery, wherein John N. Ahl is complainant and Roswell B. Johnson defendant, before William Holcombe, a special master of this court, on the 16th day of March, A. D. 1853, at the town of Stillwater, in the county of Washington, in the Territory of Minnesota, taken under a commission issued out of the said court to the said William Holcombe, dated on the 9th day of September, A. D. 1852, and taken on the part of the defendant.

First. Articles of agreement, marked A, being introduced on the part of the defendant, the execution of which was, by attorney L. A. Babcock, admitted; said articles dated June 15th, 1850.

Second. William H. Morse, being duly sworn, testifies as follows, viz: That he was acquainted with the complainant and defendant in this suit in the summer and fall of 1851, and was in the employ of defendant from about the 20th of October until the 18th day of November of said year, (1851,) which defendant was keeper of the Minnesota House in this place, witness acting as clerk and bar-keeper while in employ of defendant as aforesaid; witness heard in the bar room defendant, Johnson, ask the complainant, Ahl, for the balance due on that lot, which lot witness understood to be the same that he, Ahl, built a house on and now resides in; said Ahl

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complained, in reply, that he had a good many debts out which as soon as he could collect in. he would settle up with said defendant; witness heard defendant, Johnson, ask complainant for the balance due on the lot at least twice, if not three times. Complainant replied that he had no money; that he didn't want him to shove him, and would pay over the balance due on the lot as soon as he could collect it; witness understood defendant, Johnson, to say to complainant that he was ready to make him a deed whenever he was paid the balance due on the lot.

W. H. MORSE.

Sworn and subscribed to this 16th March, 1853.

W. HOLCOMBE,
Special Master.

Cross-examination. W. H. Morse. Witness could not state the exact day when defendant asked the complainant for the balance due on the lot, as recited above; defendant presented a bill of complainant's private account, and also a bill of the balance due on the lot; witness could not recollect the exact amount of the bill for balance due on the lot; it was less than $200; witness could not recollect that complainant ever complained of the amount being too much as claimed to be due as a balance on said lot. Complainant's solicitor asks this question, (which is objected to by defendant's solicitors,) whether the defendant, Johnson, did not say between the several conversations and after, as recited above, between the 20th Oct. and 18 November, 1851, that the time of the payment had expired, and that he, complainant, would not get a deed from him for the lot?

Defendant's objections are, that "because it is not confined to or a part of the conversation before stated, and fixed no time or date.

Witness answers that he has no recollection of any such conversation.

W. H. MORSE.

Sworn and subscribed to this 16th day of March, 1853.

W. HOLCOMBE,
Special Master.

Third. Elijah A. Bissell, sworn, testifies as follows, viz: That he resides in the town of Stillwater, and is acquainted with the parties to this suit, with the complainant about two years, and with the defendant, Johnson, some three or four years. Here the complainant's solicitor objected to any questions being answered by witness of anything transpired as touching this suit subsequent to the 1st day of November, 1851.

Witness stated that he was at the house of complainant in Stillwater about the 20th December, 1852, where he visited said Ahl on his own business, when Johnson, defendant, called—both Ahl

and Johnson being present—when Johnson said that he understood that he, the complainant, had a sum of money for him for the lot, and that he was ready to give him a deed for the lot upon the receipt of the money, which money Johnson then demanded of complainant, and called this witness to notice the same, (the amount of money demanded by defendant of said Ahl was $106 12;) at the same time Johnson tendered the deed for the lot, which is now exhibited to witness, which witness put his private mark on—the letter B—at that time; the deed filed, and by me marked "Exhibit B." Complainant replied that he had some money, but that he had *had some money, but that he had* paid it out; he had not the money then, and did not offer to give Johnson, the defendant, any money.

E. A. BISSELL.

Sworn and subscribed before me this 16th day of March, A. D. 1853.

W. HOLCOMBE,
Special Master.

E. A. Bissell.—Cross-examination.

Witness states that Johnson did not read nor offer to read the deed to complainant at the time it was tendered; nor did witness read the same; nor was it read to Ahl by any one, to the knowledge of witness. Witness put his mark on the deed at Doctor Ahl's house; witness never read the deed before this day, nor has seen the same since he put his mark on it until to-day; the deed was tendered in the evening about 7 or 8 o'clock to said Ahl by said defendant, Johnson, at the same time the money was demanded; witness has no other means of knowing the deed exhibited was the same as tendered, except by his private mark, letter B; does not know whether the same was filled up then, when tendered, as it now appears; witness understood from Ahl, that at the time that Johnson demanded the money, as above recited, and tendered the deed, immediately after, Ahl, the complainant, stated to Johnson that he had deposited some money with Bartlett, which witness understood to be to pay the defendant, Johnson, for the lot; did not recollect that anything was said about Bartlett being the only proper person to settle with defendant, Johnson; the deed was presented as a deed; Ahl was setting up, and doing business at the time.

Direct examination resumed: Witness states that the remark about depositing some money with Bartlett was made about the time Johnson was leaving the house.

E. A. BISSELL.

Sworn and subscribed to this 16th day of March, 1853.

W. HOLCOMBE,
Special Master.

Fourth. Charles D. Gilfillan, sworn, testifies as follows, viz: Here the solicitor for the complainant objected to any question being put to this or any other witness, touching any matters that has transpired since Nov. 1st, 1851, for the reasons—First, That it is of matters which arose subsequent to Nov. 1st, 1851, and since the filing of defendant's answer. Secondly, Is not concerning matters put in issue by defendant's answer. Thirdly, It is of matters attempting or intending to compromise matters in this suit. Fourthly, It is attempting or intending to show offers of compromise made to complainant, instead of his solicitor, and during his solicitor's absence.

Witness states that he is a notary public in and for the county of Washington, and Territory of Minnesota, and was acting as such December 18, 1852. Here the same deed was introduced, marked "Exhibit B," and the same as exhibited to the witness Bissell. Witness states that he took the acknowledgment of the same as therein set forth, viz: on the 18th day of December, 1852, and that said deed was filled up and executed, as it purports to have been, at the time he took the acknowledgment, and that he is a subscribing witness to the said deed. The deed was executed by Johnson and his wife, in the presence of witness; said deed was tendered by defendant's solicitor, M. E. Ames, to Doctor Ahl on the 23d day of December, 1852; said tender was made at the law office of said Ames, in the town of Stillwater, and when so tendered, said defendant's solicitor, as such solicitor, demanded the money due the defendant for the premises mentioned in the deed, said solicitor, Ames, stating to complainant, when the tender and demand was made, as just recited, that he was instructed by defendant to tender him, the complainant, the deed, and demand of him the money due the defendant for the premises described in said deed. Complainant replied that he had no money, not even enough to pay his taxes; that he had given some money to Mr. Bartlett, and Johnson ought to have taken it from him then; that Bartlett was then away, and Johnson must wait until he came back; but don't recollect Mr. Ames' reply to that. Harley Curtis was present at the time, and witness thinks Mr. Rowell was also present.

C. D. GILFILLAN.

Sworn and subscribed to this 16th day of March, 1853.

W. HOLCOMBE,
Special Master.

C. D. Gilfillan, cross-examined, states that solicitor Ames did not, as he thinks, demand any particular sum of money as due defendant for the premises in question. Witness does not know whether Doctor Ahl was called into the office of solicitor Ames; but he, the complainant, was in the office at the time the tender of the deed was made; thinks the deed was not read to Doctor Ahl

by Ames, or any one else. Witness inferred, from the conversation between Ames and Doctor Ahl, that Bartlett was complainant's solicitor, and that defendant must wait until Bartlett returned before he could get his money. Complainant's solicitor here asks this question, which defendant's solicitor objects to: Did Doctor Ahl express a perfect willingness that Bartlett, the complainant's solicitor, should pay the amount due the defendant as soon as said Bartlett returned, he being then absent?

Witness replies, that he understood Doctor Ahl to so express himself. Doctor Ahl did not deny his indebtedness at that time for the lot. Witness thinks he was present during all the conversation at this time between complainant and solicitor Ames.

C. D. GILFILLAN.

Sworn and subscribed to this 16th day of March, 1853.

W. HOLCOMBE,
Special Master.

Fifth witness, Harley Curtis, sworn, testifies as follows, viz: That he is acquainted with the defendant, Johnson, and has been for five or six years, and with the complainant, Ahl, some two or three years; that he was present in the law office of M. E. Ames on the 23d day of December, (as he thinks,) 1852, in the town of Stillwater; saw solicitor Ames tender the deed marked (Exhibit B,) (the same as testified to by witnesses Bissell and Gilfillan.) Here solicitor Ames asks the following question, (which is objected to by solicitor Babcock,) viz: Did or did not the defendant's solicitor, M. E. Ames, at that time tender and offer said deed to the complainant Ahl? and state whether or not the said solicitor demanded from Ahl the sum of money which the complainant's bill in this suit alleges before had been tendered to the defendant?

Witness answers, that the said Ames did so tender the deed, and did so demand the money, as recited in the question above. The reasons assigned by solicitor Babcock for complainant, as his objections, are—First, Because the question is in its nature leading, tending to inform the witness what answer is required. Second, That the witness read the answer, or a portion of it, from a memorandum handed to him by solicitor Ames. Witness states that the memorandum above was made and by him signed at the time that the tender of the deed was made and the money demanded, as above recited. Witness further states that the complainant replied, that he could not nor would not pay the money; that he had not money enough even to pay his taxes; that he had left the money with Bartlett, and he (Bartlett) had tendered the same to Mr. Johnson, and Mr. Johnson ought then to have taken it. Mr. Bartlett was now away from home, and he must wait until he returned. Witness states that he marked the deed with his name, H. Curtis, at the time of the tender.

H. CURTIS.

Sworn and subscribed to this 16th day of March, 1853.
W. HOLCOMBE,
Special Master.

H. Curtis, cross-examined, testifies, viz: That the memorandum to which he referred in his direct examination was dated September 23, 1852. Witness states that he was in the office with M. E. Ames, Gilfillan, Doctor Ahl, and S. M. Rowell, as he thinks, at the time that solicitor Ames knocked on the window, when Doctor Ahl came in, which witness thinks was in the month of December; he has no recollection of any one reading the contents of the deed. Witness further says, that Doctor Ahl said to solicitor Ames that Mr. Johnson must wait until Bartlett came home.

H. CURTIS.

Sworn and subscribed to this 16th day of March, 1853.
W. HOLCOMB,
Special Master.

Sixth witness, Michael E. Ames, sworn, testifies that the agreement between the parties, marked Exhibit A, was placed in his hands, as an attorney, by the defendant, Johnson, in the latter part of October, 1851, with instructions to call upon and collect the money from Mr. Ahl, also with instructions, in case the money was paid, to draw and have executed a deed, and deliver the same to Mr. Ahl; witness was Mr. Johnson's general attorney at that time; witness met Doctor Ahl about the last days of October, or first of November, in the bar room of the Lake House, spoke to him about the matter, requested payment of the money due, and told him I (witness) would make a deed and deliver to him on the payment of the money. Doctor replied to witness, that he could not at that time raise the money, and that Mr. Johnson must hold on in the matter. Witness witnessed the deed as mark'd "Exhibit B," as has been exhibited from the defendant and Emeline his wife to the complainant, and dated the 18th day of December, 1852; it was fully executed and acknowledged on that day. Johnson, the defendant, directed witness, as his solicitor, to deliver the deed to the complainant upon his paying into solicitor's hands for Johnson the balance that was admitted to be due upon the lot, as stated in the bill of complaint. In pursuance of witness' instructions as solicitor from Mr. Johnson, witness called Doctor Ahl, the complainant, into his, the solicitor's, law office, in Stillwater, on the 23d day of last December, and tendered the deed to him, and stated to him what the deed was, what premises it conveyed, and told him that witness was instructed by Mr. Johnson to deliver it to him, upon his paying to him, as solicitor for Mr. Johnson, the balance of the money due upon the lot. Witness then tendered to Ahl the deed, and demanded the money which was stated in the bill to have

before been tendered; witness told Ahl to pay him the money then admitted to be due on the lot, and he might then have the deed; he replied he had no money, not even to pay taxes with. He stated that he had once given the money to Mr. Bartlett to pay Johnson; that Bartlett was his lawyer; that Bartlett had once offered the money to Johnson; that Johnson ought then to have taken it from Bartlett; that Bartlett was gone away, and he, Ahl, couldn't do anything about it until Bartlett came home.

M. E. AMES.

Sworn and subscribed to this 16th day of March, 1853.

W. HOLCOMBE,
Special Master.

M. E. Ames, cross-examined, says: That at the time that he saw Doctor Ahl in Lake House in October or November, 1851, no suit had been commenced; further, that on the 23 Dec., 1852, at the time the deed was tendered, as suit had been previously commenced, and witness was one of the solicitors for defdt., nothing was said at this time about settling this suit or the costs of it. Solicitor Ames had refiled defendant's answer to this suit on June 23, 1852; witness called complainant, Ahl, into his office, and tendered him the deed, and demanded the money, to put an end to this suit, if he had paid the money. Complainant's solicitor here asked witness the following question: Did you intend the tender of the deed as a compromise of this suit? Answer: I intended to and would have delivered the deed to complainant at that time if he had paid the money which I demanded, and that would of course put an end to the suit.

M. E. AMES.

Sworn and subscribed to this 16th day of March, 1853.

W. HOLCOMBE,
Special Master.

Articles of agreement, made this fifteenth day of June, A. D. 1850, between Roswell B. Johnson, of the village of Stillwater, Washington county, Minnesota Territory, party of the first part, and John N. Ahl, of the same place, party of the second part, as follows, to wit: the said Johnson agrees to sell and convey, by a good warranty-deed of conveyance, containing covenants of warranty against all incumbrances, to the said Ahl, the following piece or parcel of land lying in the said village of Stillwater, and described as follows, to wit:

Beginning on the east side of Main street, on the south line of what is commonly called the Vail property in said village, thence northwardly along the said east line of Main street forty (40) feet, thence easterly in a line parallel with the said south line of the said Vail property to the lake, thence southerly along the shore of the lake to the south line of the said Vail property, thence westerly to to the place of beginning, (and being the south forty (40) feet of

lot (No. 10,) in block No. twenty-eight, (28,) of said village of Stillwater, as the same was surveyed and platted by Harvey Wilson,) with all and singular the hereditaments and appurtenances thereunto belonging: Provided, always, that the said Ahl pay or cause to be paid to the said Johnson the sum of one hundred and sixty-five dollars on the first day of October next, or the sum of one hundred and ninety dollars, with interest, on the first day of May, A. D. 1851. And the said Ahl agrees to purchase of the said Johnson the said premises above described, and agrees to pay for the same in manner and amount as above specified. And it is further agreed by and on the part of the said Ahl, that he will build a wharf upon the said lot next to the lake, suitable for steamboat landing, the whole forty feet upon the lake, so far as to extend one hundred and twenty feet from the east line of the street: Provided that the said Johnson makes a similar wharf, and of similar dimensions, on his lot, and adjoining *adjoining* the said Ahl's; and either party may commence the building of the same, but neither shall be compelled to continue and complete the said wharf, unless the other party shall also commence and continue the building of his own part of said wharf within a reasonable time, with reasonable diligence, and upon notice from the other party. And it is further agreed by and between the parties above named, that these articles of agreement shall refer to and be binding, as well upon the executors, heirs, and administrators of the said parties as upon the parties themselves.

"In witness whereof, the said parties have hereto set their hands and seals the day and year first above written.

R. B. JOHNSON, [SEAL.]
J. N. AHL, [SEAL.]

In presence of
M. E. AMES.

[Endorsed:] Articles of agreement. Roswell B. Johnson to John N. Ahl. Rec'd on within 60 dollars. Rec'd on the within contract thirty dollars 33-100. Exhibit A.

This indenture, made this eighteenth (18th) day of December, in the year of our Lord one thousand eight hundred and fifty-two, between Roswell B. Johnson and Emeline Johnson, his wife, of the county of Washington, and Territory of Minnesota, of the first part, and John N. Ahl, of the same place, of the second part, witnesseth, that the said parties of the first part, for and in consideration of the sum of two hundred ($200) dollars in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have given, granted, bargained, sold, conveyed, and confirmed, and by these presents do give, bargain, sell, convey, and confirm unto the said party of the second part, his heirs and assigns, forever, all the following described piece or parcel of land, situate, lying, and being in the county of Washington, and known and

designated as follows, viz: "Beginning on the east side of Main street, on the south line of what is commonly called the 'Vail property,' in the village or town of Stillwater, thence northwardly along the east side of Main street forty (40) feet, thence easterly in a line parallel with the said south line of the said 'Vail property' to the lake, thence southerly along the shore of the lake to the south line of the said 'Vail property,' thence westerly to the place of beginning, (and being the south forty (40) feet of lot No. 10, in block No. twenty-eight, (28,) of said town of Stillwater, as the same was surveyed and platted by Harvey Wilson:"

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in any wise appertaining, and all the estate, right, title, interest, and claim whatsoever, of the said parties of the first part, either in law or equity, in and to the above-described premises, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns, forever. And the said parties of the first part, for themselves, their heirs, executors, and administrators, do covenant and agree to and with the said party of the second part, his heirs and assigns, that the said Roswell B. Johnson, the above grantor, is well seized in fee of the aforesaid premises, and has good right to sell and convey the same in manner and form as above written, and that the same are free of all incumbrances whatever; and that the aforesaid premises, in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against any person lawfully claiming or to claim the whole or any part thereof, they will forever warrant and defend.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

ROSWELL B. JOHNSON, [L. S.]
EMELINE JOHNSON. [L. S.]
[L. S.]

Sealed and delivered in presence of
MICHAEL E. AMES,
CHAS. D. GILFILLAN.

TERRITORY OF MINNESOTA,
County of Washington, ss:

Be it known that on the eighteenth day of December, A. D. 1852, before the undersigned personally came Roswell B. Johnson and Emeline, his wife, personally known to me to be the grantors to the foregoing and within deed from them as such grantors to John N. Ahl, and to me personally known to be the identical persons described in and who executed the said deed, and they both acknowledged that they executed the said deed freely and voluntarily for the uses and purposes therein expressed. And the said Emeline, wife of the said Roswell B. Johnson, was privately examined by

me separate and apart from her husband, and further acknowledged that she executed the foregoing deed without any fear or compulsion from her said hnsband, or any other person.

C. D. GILFILLAN, [L. S.]
Notary Public.

[Endorsed:] Roswell B. Johnson and Emeline, his wife, to John N. Ahl. Warranty deed. B. H. Curtis. Exhibit B. W. Holcombe, special master.

JOHN N. AHL, Complainant,
vs.
ROSWELL B. JOHNSON, Defendant.
} In chancery, district court, first judicial district.

To F. K. BARTLETT, Esq.,
Complainant's Solicitor.

Take notice that William H. Morse, Narcissus Le Roy, Hasley Curtis, Charles D. Gilfillan, Elijah A. Bissell, and Michael E. Ames will be examined as witnesses, and their testimony taken in this cause on the part of the defendant, Roswell B. Johnson, before William Holcombe, esq., the special master, duly appointed and commissioned to take testimony in this cause, at the office of Harvey Wilson, esq., (clerk of the said district court,) in the town of Stillwater, in the county of Washington, Territory of Minnesota, on Wednesday, the 16th day of March, A. D. 1853, commencing at ten o'clock in the forenoon of that day.

Stillwater, the 9th day of March, A. D. 1853.

Yours, respectfully,
AMES & NELSON,
Defendant's Solicitors.

TERRITORY OF MINNESOTA,
County of Washington, ss:

Charles D. Gilfillan, of lawful age, came personally before me, and being duly sworn, says, that on the ninth day of March, 1853, he served the notice in writing (of which the foregoing is a true copy) upon Frederick K. Bartlett, esq., the complainant's solicitor in the within entitled cause, by delivering the said written notice to Mrs. Bartlett, the wife of the said Frederick K. Bartlett, in his office and dwelling-house, in the town of Stillwater, in said county, between the hours of two o'clock and four o'clock in the afternoon of said day.

And deponent further says, that said Frederick K. Bartett was himself absent from home at that time, and out of this Territory, as deponent was informed and believes.

C. D. GILFILLAN.

Sworn to and subscribed before me the 16th day of March, A. D. 1853.

HARVEY WILSON,
Clerk Dist. Court.

D.

JOHN N. AHL, Complainant,
vs.
ROSWELL B. JOHNSON, Defendant.
} In chancery, district court, first judicial district.

To JOHN N. AHL,
Complainant.

Take notice that William H. Morse, Narcissus Leroy, Harley Curtis, Charles D. Gilfillan, Elijah A. Bissell, and Michael E. Ames will be examined as witnesses, and their testimony taken in this cause on the part of the defendant, Roswell B. Johnson, before William Holcombe, esq., the special master, duly appointed and commissioned to take testimony in this cause, at the office of Harvey Wilson, esq., (clerk of the said district court,) in the town of Stillwater, in the county of Washington, Territory of Minnesota, on Wednesday, the 16th day of March, A. D. 1853, commencing at ten o'clock in the forenoon of that day.

Stillwater, the 9th day of March, 1853.

Yours, respectfully,
AMES & NELSON,
Defendant's Solicitors.

C.

TERRITORY OF MINNESOTA,
County of Washington, ss:

Charles D. Gilfillan came personally before me, and being duly sworn, says, that on the ninth day of March, A. D. 1853, he (this deponent) delivered to John N. Ahl personally, in the town of Stillwater, in said county, the written notice of which the within and foregoing is a true copy; and that said John N. Ahl, to whom he delivered said notice, is personally known to deponent to be the complainant in the within entitled suit.

C. D. GILFILLAN.

Sworn to and subscribed before me the 16th day of March, A. D. 1853.

HARVEY WILSON,
Clerk Dist. Court.

[Endorsed:] Notice.

The district court for the county of Washington, Minnesota Territory, also sitting in chancery, to William Holcombe, esq., of said county, greeting:

In conformity with an order of said court, given at chambers on the 27th day of July, 1852, you are hereby commissioned as special master in chancery, with full power to take testimony, in a suit wherein John N. Ahl is complainant, and Roswell B. Johnson defendant, both on the part of the complainant and defendant, which you are required to report and return to said court, in accordance with the statutes of this Territory and the rules of said court.

Witness the Hon. Jerome Fuller, judge of the 1st judicial district, Minnesota Territory, at Stillwater, in said county of Washington, the 9th day of September, 1852.

[L. S.]

Attest:

HARVEY WILSON, *Clerk*.

TERRITORY OF MINNESOTA,
County of Washington, ss:

I, William Holcombe, the special master named in the annexed commission, having been duly sworn to faithfully, honestly, and impartially perform the duties assigned me, and for which I was appointed and commissioned as special master, in a suit wherein John N. Ahl is complainant, and Roswell B. Johnson defendant, I do hereby certify, report, and return, that under and by virtue of the annexed commission, that the annexed and foregoing testimony or depositions of William H. Morse, Elijah A. Bissell, Charles D. Gilfillan, Harley Curtis, and Michael E. Ames, was taken by and before me as special master, at the office of Harvey Wilson, esq., clerk of the district court of Washington county, in the town of Stillwater, in the county of Washington, in the Territory of Minnesota, on the 16th day of March, A. D. 1853, that the examination of said witnesses and taking of said testimony was commenced at ten o'clock in the forenoon of that day, and finished before sunset of the same day; that the testimony of said witnesses was taken in a suit in chancery wherein John N. Ahl is complainant, and Roswell B. Johnson defendant, now pending in the district court, in the county of Washington, in said Territory, at the request and on the part of Roswell B. Johnson, the defendant, upon verbal interrogatories, and the same was reduced to writing by myself; that said witnesses, before their examination, were each severally sworn by me to testify the truth, the whole truth, and nothing but the truth, relative to the said cause, and the testimony of each witness was carefully read over to him before signing, and then subscribed in my presence, and the articles of agreement marked "Exhibit A," and the deed marked "Exhibit B," annexed to and

returned with the said testimony, were also then and there produced and given in evidence by the defendant, and by me marked exhibits A and B, respectively; and I further certify, that previous notice was given to the complainant and his solicitor of the time and place of taking said testimony, the copies of which, with affidavits of service thereon, was produced before me, and which I have annexed, marked C and D, and herewith return; and that the complainant and his solicitor attended the taking of said testimony, and cross-examined each of the said witnesses.

Given under my hand this sixteenth day of March, A. D. 1853.

WILLIAM HOLCOMBE,
Special Master.

Master's fees	$6 25
Witness' "	5 30
	11 55

Rec'd pay't of defdt.

W. HOLCOMBE.

[Endorsed:] John N. Ahl vs. Roswell B. Johnson. Testimony taken before W. Holcombe, special master. Filed March 21, 1853. H. Wilson, clerk.

[Endorsed:] John N. Ahl, compt., vs. Roswell B. Johnson, deft. Testimony taken before me in said cause. W. Holcombe, special master. Filed March 21, 1853. H. Wilson, clerk. Harvey Wilson, esq., clerk of the district court of Washington county, Minnesota Ter., Stillwater, Washington co., Min. Ter.

DISTRICT COURT, FIRST JUDICIAL DISTRICT,
Washington County.

JOHN N. AHL, Complainant,
vs.
ROSWELL B. JOHNSON, Defendant.
} In chancery.

Sir: Take notice, that upon the defendant's answer on file, and depositions or testimony of Harley Curtis, Charles D. Gilfillan, Michael E. Ames, and William H. Morse, heretofore taken, and also on file in the above-entitled suit, a motion will be made on the part of the defendant, and argued before the Hon. William H. Welch, chief justice and judge of said district court, at his chambers, in St. Paul, in the county of Ramsey, in said judicial district, on Friday, the 29th day of July inst., (A. D. 1853,) at 10 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard for an order, that the injunction, heretofore issued in the above-entitled suit, be dissolved, with costs, or for such other or further order as the court may grant, for reasons appearing from

the defendant's answer, and the depositions or testimony of Harley Curtis, Charles D. Gilfillan, Michael E. Ames, and William H. Morse aforesaid, which will be read upon the argument and hearing of said motion.

Yours, &c.,

AMES & NELSON,
Deft's Solicitors.

To F. K. BARTLETT, Esq.,
Complt's Solicitor.
Stillwater, July 21, 1853.

TERRITORY OF MINNESOTA,
Washington County, ss:

C. D. Gilfillan came personally before me, and being duly sworn, says that he served the original notices, of which the within is a true copy, upon F. K. Bartlett, complt's solicitor, on the 21st of July, 1853, by leaving one of the notice in the dwelling-house and law office of said Bartlett, in presence of L. E. Thompson, esq., and also upon John N. Ahl, complainant, by delivering to him a copy directed to him, in Stillwater, in said county, on the 21st day of July, 1853.

C. D. GILFILLAN.

Sworn and subscribed before me this 29th day of July, 1853.
HARVEY WILSON,
Clerk Dist. Court.

[Endorsed:] Wash. co. dist. court. John N. Ahl, complt., vs. Roswell B. Johnson, deft. Notice of motion to dissolve injunction. Ames & Nelson, deft's solicitors.

Formerly in chancery, now entitled in district court, first judicial district.

JOHN N. AHL
vs.
ROSWELL B. JOHNSON.
} At chambers, Saint Paul, 29th July.

On reading notice of motion on part of defendant to dissolve the injunction issued in this cause, and papers mentioned therein, after hearing M. E. Ames in support of said motion, and L. E. Thompson in opposition,

It is ordered, that said motion be and the same is hereby denied.

W. H. WELCH,
Chief Judge.

[Endorsed:] In dist. court. John N. Ahl vs. Roswell B. Johnson. Order to be entered. No. 6, June term, 1852. Filed August 15, 1853. H. Wilson, clerk.

TERRITORY OF MINNESOTA.

Formerly in chancery, now entitled as of district court, first judicial district, county of Washington, ss:

JOHN N. AHL
vs.
ROSWELL B. JOHNSON.

Depositions of witnesses produced, sworn, and examined in a certain case depending and at issue in the district court in and for the county of Washington, Territory of Minnesota, sitting in chancery, wherein John N. Ahl is complainant, and Roswell B. Johnson is defendant, before William Holcombe, a special master of this court, on the 15th day of August, A. D. 1853, at Stillwater aforesaid, taken under a commission issued out of the said court to the said William Holcombe, dated 9th day of September, A. D. 1852, and taken on the part of the complainant.

August 15th, 1853, 11 o'clock a. m. The parties, by their respective counsel, met at the office of Thompson & Parker, such time and place having been first by me duly appointed, and a notice of the examination of Abraham VanVorhes, Jonathan E. McKusick, and Frederick K. Bartlett, with the proof of service thereof duly made thereon having been produced, which is hereto annexed, the following proceedings were had, to wit: Frederick K. Bartlett, witness, being produced and sworn on the part of the complainant, says: About 12 o'clock M., on the first day of November, 1851, I tendered Mr. Johnson, the defendant, $107 10, lawful currency of the U. S., on behalf of the complainant, J. N. Ahl—3 twenty-dollar pieces of gold, double-eagles so called, 3 gold-eagles or ten-dollar pieces, 3 half-eagles or five-dollar pieces, 4 half-dollar pieces of the value of fifty cents each, and one dime of the value of ten cents, and said to Mr. Johnson as follows: I hereby offer and tender to you $107 10, as principal and interest in full to this 1st day of Nov., 1851, due upon a contract signed by yourself and John Ahl, dated June 15th, 1850, as the balance of the purchase-money and interest thereon due upon said contract for the sale of the following described property, lying in the village of Stillwater, in the county of Washington and Ter. of Min., viz: beginning on the east side of Main street, on the south line of what is commonly called the Vail property in said village, thence northwardly along the east side of Main street forty feet, thence easterly in a line parallel with the said south line of the said Vail property to the lake, thence southerly along the shore of the lake to the south line of the said Vail property, thence westerly to the place of beginning, and being the south forty feet of lot No. ten, in block No. twenty-eight, of said village of Stillwater, as the same was surveyed and platted by Harvey Wilson, with all and singular the hereditaments and appurtenances thereunto belonging; the above sum is hereby

tendered to you on behalf and at the request of the said John Ahl; and the other conditions of said contract having been fulfilled on his part, the said Ahl's part, a deed of said property according to the terms of said contract is demanded from you, and you are hereby notified that the said sum so tendered is always in readiness to be paid by F. K. Bartlett at his house in said Stillwater, on account and in behalf of said John Ahl, and at said John Ahl's request; the money was placed upon the table, Mr. Johnson sitting near the same, and I said further to him, there is the money. Mr. Johnson got up, went out of the office, and didn't take it, nor did he offer to give me a deed at any time for said Ahl. This tender was made at the office of H. L. Moss, in Stillwater, (solicitor for defendant, Mr. Gilfiillan, here interposed an objection as relating to what the witness told the defendant, Johnson, as the testimony was given by witness from a paper read by witness;) witness further says, that the paper from which he has just read is the same that he read from at the time he made the tender to Johnson.

Solicitor for complainant here asked the witness the following question: State what, if any thing, was said between complainant and defendant in relation to the boundary of said lot after the execution of the agreement and before the commencement of this suit? Solicitor for defendant objects to the above question and the answer of the witness to the same. Ans. On or about the 7th day of Sep., 1850, the complainant and defendant were in the office of H. L. Moss, and I was present; complainant told the defendant that he, the defdt., had misrepresented to him the westerly boundary of the lot when he, the defdt., showed him the lot, and that he, the complainant, had been damaged thereby; defdt. said that he had made a mistake in the boundary or line, but that said complainant had not been damaged by it; some general conversation ensued, complainant insisting that he was damaged and the defdt. that he was not, (this last part of testimony as to who was and who was not damaged, objected to by solicitor for defdt., as it was incompetent, that it was not the best evidence, that the conversation itself should be given.)

Witness resumed: The complainant and defendant referred the matter of misrepresentation and damages to three referees, Jonothan E. McKusick, Abram VanVorhes, and myself, and agreed to abide by our decision in reference thereto. The complainant and defendant stated to us referees their case; we visited the property and examined it, found that there was a difference of about six or eight feet in width between the representation of the defendant to the complainant and the true boundary to the lot, and that said difference was a damage to the complainant of thirty dollars and thirty-three cents or thirty-three dollars and thirty-three cents, I am not certain which it was; we made that our decision, and Mr. Johnson, the defendant, receipted that amount on the back of the contract held by Mr. Ahl, in acceptance of our decision.

Solicitor for complainant asks this ques.: Has or has not the complainant had the possession of the lot since the execution of the contract? Ans. I do not know how soon after the execution of the contract that complainant took possession of the lot, but he had possession soon after, and has had possession of it ever since, and has improved the lot very much by putting a valuable building thereon. The complainant and defendant have both resided in this, the same village, ever since the execution of the agreement, and defendant knew that the complainant had the possession of the lot.

F. K. BARTLETT.

Sworn to and subscribed before me this 15th day of August, A. D. 1853.

W. HOLCOMBE,
Special Master.

12 o'clock and 27 min., adjourned one hour.
1 o'clock and 27 min.

F. K. Bartlett, cross-examined, says: I read a portion of the testimony which I gave in my direct examination from a paper; the portion which I read as contained in my testimony commenced from the words "I hereby offer and tender to you," and ending with "said John Ahl, and at said John Ahl's request." The defendant's solicitor now objects to that part of witness' testimony which witness read from a paper on his direct examination, for the reasons, first: That it is not competent testimony. Second. That it is not the best evidence of the fact contained in that portion of his direct examination. Witness resumes: At the time I made the tender, I think there was no person present in the front office except Mr. Johnson and myself; Mr. Moss, was I think in the back office, and my impression is that he came into the front office either while I was making the tender or immediately afterwards, and that I did not make but one tender to Mr. Johnson in this case, the door being open between the front and back officeat the time; as I think, at the time the money was tendered or placed on the table; do not remember to have counted the money over in his presence; do not think I did.

Mr. Johnson was present when the money was put on the table, and I told him there was $107 10-100. I read every word from the same paper at the time of the tender that I have read from to-day in my direct examination. I think I placed the money on the table at the time I began to read the paper, but am not certain. I cannot repeat from memory what I gave as testimony reading from the paper on my direct examination as it regards the tender.

F. K. BARTLETT.

Sworn to and subscribed before me this 15th day of August, 1853.

W. HOLCOMBE,
Special Master.

The solicitor for the defendant here offered to introduce witnesses to impeach the witness, F. K. Bartlett, as to truth and veracity, which the special master refused to receive, for the reason that six days' notice had not been given previous to the introduction of said witnesses, as required by the order for the commission to take the depositions in this case.

Abraham Van Vorhes, witness on the part of the complainant, being produced and sworn, says, that I am acquainted with parties to this suit, John N. Ahl, complainant, and R. B. Johnson, defendant; was present at an interview between the parties, in the office of H. L. Moss, he and myself occupying the same office; that it was in the year 1850, and that, from an entry made on a paper by the defendant in my presence, it was in the month of September; F. K. Bartlett was present, and whether Jonathan E. McKusick was present at the commencement of the interview, I know not, but was shortly after. Mr. Ahl complained that he had been deceived; (this answer, so far, objected to by solicitor for defendant, who requires that the language should be given.) Witness resumed: Mr. Ahl said, that Mr. Johnson had sold him a lot, and pointed out to him the western boundary, and when the boundary was ascertained, it was found to be several feet further east, and that he therefore should have to build further in the lake, and consequently should claim damages. I understood Mr. Johnson then to say, that he had pointed out the boundary where he supposed it was, but that he was mistaken; but said that he did not think it was any damage to Mr. Ahl. After some altercation, which I do not now remember, they agreed to leave it to three men to say what damage, if any, had been sustained by Mr. Ahl about the boundary. Mr. F. K. Bartlett, Jona. E. McKusick, and myself were agreed upon to examine the premises, to assess the damages, if any in our opinion existed. The three referees aforesaid, with Mr. Johnson and Doctor Ahl, repaired to the lot; there was no difference of opinion about the boundary as pointed out by Mr. Johnson originally; they then showed us the stakes which was the true boundary, which were from eight to ten feet further east, the exact distance not recollected; the referees then assessed the damages, which amount was not under $30, nor over 36 dollars; the referees then went to the office and reported; soon after which, the parties to this suit came in, and Mr. Johnson took a paper, which I understood to be the contract for the lot, and made an endorsement thereon, which I understood to be the amount the referees had agreed upon. Mr. Ahl was in possession soon after the above arbitration, and has been ever since; has put up a two-story building upon a stone basement or a high stone wall, and keeps boarders, and has for some time. A small amount of leveling or filling up is required in front, to make it convenient. Mr. Johnson lives in the same village with Doctor Ahl until this spring, when he moved

to public buildings near by; improvements that complainant made were considered valuable in this place.

A. VAN VORHES.

Sworn to and subscribed before me this day, August 15, 1853.

W. HOLCOMBE,
Special Master.

Abraham Van Vorhes, cross-examined, says, that I do not know that any other person was present than those named at Moss' office. Mr. Johnson said that he had pointed out the boundary where he supposed it existed, and that he was mistaken; but as he had acted in good faith, he was not accountable for damages. I have no recollection that the agreement to arbitrate was in writing, or that there was any penalty if Johnson refused to comply with award; our award or report, I think, was verbal. I did not read the endorsement which Mr. Johnson made on the contract; do not recollect of taking into my hands, nor can I identify, the paper or contract, if I should see it again. I do not know, from my own knowledge, in what month positively the arbitration took place; but infer, from the handwriting and date on the back of a paper then produced, said to be the contract, that it was in September.

A. VAN VORHES.

Sworn and subscribed before me this 15th August, 1853.

W. HOLCOMBE,
Special Master.

A. Van Vorhes re-examined on the part of complainant.

Question. Did you have any other interview with these parties, when the same persons were present?

Answer. I have no recollection of any.

A. VAN VORHES.

Sworn to and subscribed before me this 15th day of August, 1852.

W. HOLCOMBE,
Special Master.

Jonathan E. McKusick, being introduced as a witness on the part of the complainant, was sworn, says, that I am acquainted with the parties to this suit; that I was present at an interview between the parties to this suit, at the office of H. L. Moss, in Stillwater, in fall of 1850; that Mr. Johnson, Mr. Ahl, Mr. Bartlett, Mr. Van Vorhes, and myself were present, when Mr. Johnson and Mr. Ahl were in conversation about a lot on which Mr. Ahl now resides. Mr. Ahl claimed that Mr. Johnson had sold him more land than he got, or that the line of the lot on the street was further east than Mr. Johnson represented, and therefore that Mr.

Johnson should allow him a deduction on the price of the lot. Mr. Johnson replied, that he had sold him to where he thought the line was; he went with us where the line was, and showed us where the line was, as he supposed and as he had pointed out in his sale to Mr. Ahl; and also showed us where the line was which was the true line, and which was further east, about eight or ten feet, than the line pointed out in the sale, which reduced the depth of the lot that distance on the front, in consequence of which the parties to this suit agreed to submit the matter to F. K. Bartlett, A. Van Vorhes, and myself, to ascertain the damages, if any, to Mr. Ahl by the reduced size of the lot; and, as arbitrators, we decided that Mr. Johnson should allow Mr. Ahl between thirty-two and thirty-four dollars—the precise amount I cannot recollect—which both parties agreed to, when we reported at the office. Mr. Johnson then said he would endorse the amount on his contract; he had a paper in his hand, which he said was the contract, and set down at the table and, I think, wrote on that paper what I supposed was the endorsement. I do not know the time that Mr. Ahl went into the possession of the lot, but was in possession at the time of the arbitration, and has been ever since; has built a two-story building on the lot, and kept it as a boarding-house or hotel; and has made other improvements, in building a wharf, and leveling and grading the grounds, but to what amount do not know.

J. E. McKUSICK.

Sworn and subscribed before me this 15th day of August, 1853.

W. HOLCOMBE,
Special Master.

Jonathan E. McKusick, cross-examined, says, that the award of the referees was reported verbally, and not in writing.

J. E. McKUSICK.

Sworn to and subscribed before me this 15th day of August, 1853.

W. HOLCOMBE,
Special Master.

Formerly in chancery, now in district court, first judicial district.

JOHN N. AHL
vs.
ROSWELL B. JOHNSON.

GENT.: Take notice, that the following witnesses, to wit, Jonathan E. McKusick, Abraham Van Vorhes, and Frederick K. Bartlett, esqs., all of Stillwater, M. T., will be examined, on behalf of the above-named complainant, before William Holcombe, esq., the master duly appointed in this cause, such examination to be had at the

office of Thompson & Parker, in Stillwater aforesaid, on the 15th day of August instant, to commence at ten o'clock in the forenoon, and to proceed as shall suit the convenience of such master.

Dated August 6, 1853.

Yours, &c.,
F. K. BARTLETT, and
THOMPSON & PARKER,
Sol'rs for Complainant.

To AMES & NELSON, Esqs.,
Defts. Solrs.

[Endorsed:] John N. Ahl, comp't, vs. Roswell B. Johnson. Depositions taken on part of complainant in the above cause by me. W. Holcombe, special master. Harvey Wilson, esq., clerk of the district court, county of Washington, Stillwater, M. Ter. Filed Sept. 16, 1853. H. Wilson, clerk.

TERRITORY OF MINNESOTA,
County of Washington, ss:

Levi E. Thompson, of said county, being duly sworn, doth depose and say, that on the 8th day of August instant he served the foregoing notice of examination of witnesses on M. E. Ames, one of the solicitors therein named, by leaving a true copy of such notice with one C. D. Gilfillan, at and in the office of said Ames, the said Ames being absent, and the said Gilfillan having charge of said Ames' office at such time; that such service was at about 10 o'clock a. m. of that day, and further saith not.

L. E. THOMPSON.

Sworn to before me this 15th day of August, 1853.
W. HOLCOMBE,
Special Master.

[Endorsed:] Dist court, Wash. co. John N. Ahl vs. Roswell B. Johnson. No examination of wit's on part of compl't. I hereby admit service of a copy of the within notice of examination of witnesses, this 8th August, 1853. M. E. Ames, per C. D. Gilfillan.

In district court, sitting in equity.

JOHN N. AHL, complainant,
vs.
ROSWELL B. JOHNSON, defendant.

TERRITORY OF MINNESOTA,
County of Washington, ss:

The foregoing are the depositions of witnesses on the part of the

complainant, sworn and examined before me in the above-entitled cause, pursuant to a commission issued therein, dated the 9 Sept., 1852, and annexed to former depositions taken in this cause.

Dated August 15th, 1853.

W. HOLCOMBE,
Special Master.

Fees $6 55. Received of L. A. Thompson for complainant.
W. HOLCOMBE, *S. M.*

[Endorsed:] John N. Ahl vs. Roswell B. Johnson. Depositions taken on part of complainant before W. Holcombe, special master. Filed Sept. 16, 1853. H. Wilson, clerk.

At a term of the district court in and for the county of Washington, Territory of Minnesota, sitting as a court of chancery, held at the court house in Stillwater, Min. Ter., on the 6th day of October, A. D., 1853:

Present, Hon. Wm. H. Welch—

JOHN N. AHL, complainant,
vs.
ROSWELL B. JOHNSON, defendant.

Decree.

This cause being brought to a hearing upon the pleadings and proofs therein, and the same having been submitted upon written argument by Mr. L. E. Thompson, as counsel for the complainant, and Mr. M. E. Ames, as counsel for the defendant; and having duly considered the pleadings, proofs, and arguments, and it satisfactorily appearing to this court that a good title can be made by the defendant to the premises described in the agreement between the parties to this cause, mentioned in the pleadings therein, and dated the fifteenth day of June, A. D. 1850—

It is thereupon ordered, adjudged, and decreed, and this court, by virtue of the power therein vested, doth order, adjudge, and decree that the said agreement, so made and entered into between the complainant and defendant, and duly proven in this cause, be specifically performed. And it is further ordered and decreed, that the said defendant, upon being paid or tendered the balance of the purchase money of said premises admitted to be due, being the sum of one hundred and seven dollars and ten cents, $107 10, with interest from the time the same became due by the complainant, his agent or attorney, execute and deliver to the complainant a proper and sufficient conveyance in fee of the premises described in the agreement between the parties, and particularly described therein, to be approved by Harvey Wilson, the register and clerk of this court, in case the parties differ about the same, within thirty days from the service of a copy hereof.

And it is further ordered and decreed, that the said defendant do pay to the complainant the costs of this suit to be taxed, and that the complainant have execution therefor.

And it is further ordered, that in case the amount of the purchase money hereby decreed to be paid or tendered is not received by the defendant, the same shall be paid into court for his use.

W. H. WELCH,
Chief Justice.

[Endorsed:] In district court, 1st judicial district. In chancery. John N. Ahl vs. Roswell B. Johnson. Decree. F. R. Bartlett, & Thompson & Parker, solr. and counsel for complt. We hereby admit service of a copy of the within decree this 11th day of May, 1854. M. E. Ames, deft.'s counsel. Filed May 11, 1854. H. Wilson, clerk.

Know all men by these presents, that we, Roswell B. Johnson, of Stillwater, in the county of Washington, and Territory of Minnesota, and Alvah D. Heaton, and Michael McHale, of said county and Territory, are held and firmly bound unto John N. Ahl, in the sum of three hundred (300) dollars, to be paid to the said John N. Ahl, his executors, administrators, or assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this thirteenth day of May, A. D., 1854.

Whereas the above-named Roswell B. Johnson has appealed to the supreme court of the Territory of Minnesota from a final decree made by the Hon. William H. Welch, chief justice, and judge of the first judicial district, in a cause in which the said John N. Ahl was complainant and the said Roswell B. Johnson defendant, in chancery, in the district court of the county of Washington:

Now, therefore, the condition of this obligation is such, that if the said Roswell B. Johnson shall pay, satisfy, and perform the order or decree of the supreme court, and all costs in case the decree of the said district court shall be affirmed, and pay all damages that may be awarded against him in the cause, then the above obligation shall be void; otherwise to be and remain in full force and virtue.

R. B. JOHNSON, [L. S.]
A. D. HEATON, [L. S.]
M. McHALE, [L. S.]

Signed, sealed, and delivered the day and year above written in presence of—

C. D. GILFILLAN.

COUNTY OF WASHINGTON, *ss:*

Roswell B. Johnson, above named, came personally before me, and being duly sworn, says that he is a resident of the county of Washington, and that he is worth the sum of six hundred dollars

over and above all just debts and responsibilities or liabilities, in property not exempt from levy and sale on execution by the laws of this Territory.

R. B. JOHNSON.

Sworn to and subscribed before me this 17th day of May, 1854.
C. D. GILFILLAN,
Notary Public.

TERRITORY OF MINNESOTA,
County of Washington, ss:

A. D. Heaton and Michael McHale came personally before me, and being each duly sworn, does each for himself severally say, that he is a resident and freeholder within said Territory, and is worth the sum of six hundred dollars over and above all just debts, responsibilities, or liabilities in property not exempt from levy and sale on execution by the laws of this Territory.

A. D. HEATON,
M. McHALE.

Sworn to and subscribed before me this 17th day of May, 1854.
C. D. GILFILLAN,
Notary Public.

I approve of the form and execution of the foregoing bond and of the sufficiency of the sureties therein. Dated May 25th, 1854.
W. H. WELCH,
Ch. Justice, Minnesota Territory.

[Endorsed:] District court, 1st judicial district. In chancery. John N. Ahl vs. Roswell B. Johnson. Appeal bond. Service of a copy of the within bond is hereby admitted this 12th day of June, 1854. F. R. Bartlett, and Thompson & Parker, solr. for comp't. Filed June 12, 1854. H. Wilson, clerk.

TERRITORY OF MINNESOTA,
District Court, 1st Judicial District, County of Washington.

JOHN N. AHL, complainant,
vs.
ROSWELL B. JOHNSON, defendant.
} In chancery.

Notice of Appeal.

Gentlemen: You will please to take notice, that Roswell B. Johnson, the defendant in the above entitled cause, feeling himself aggrieved by the decree made therein, has appealed and does appeal to the supreme court of this Territory, from the final decree made

in this cause by the Hon. William H. Welch, chief justice, and judge of the first judicial district of said Territory, and from every part thereof, which decree is in the following words and figures, viz:

JOHN N. AHL, complainant,
vs.
ROSWELL B. JOHNSON, defendant.

This cause being brought to a hearing upon the pleadings and proof therein, and the same having been submitted upon written arguments by Mr. L. E. Thompson, as counsel for the complainant, and Mr. M. E. Ames, as counsel for the defendant, and having duly considered the pleadings, proofs, and arguments, and it sufficiently appearing to this court that a good title can be made by the defendant to the premises described in the agreement between the parties to this cause, mentioned in the pleadings therein, and dated the fifteenth day of June, A. D. 1850.

It is thereupon ordered, adjudged, and decreed, and this court, by virtue of the power therein vested, doth order, adjudge, and decree, that the said agreement so made and entered into between the complainant and defendant, and duly proven in this cause, be specifically performed.

And it is further ordered and decreed, that the said defendant, upon being paid or tendered the balance of the purchase-money of said premises admitted to be due, being the sum of one hundred and seven dollars and ten cents, with interest from the time the same became due by the complainant, his agent or attorney, execute and deliver to the complainant a proper and sufficient conveyance in fee of the premises described in the agreement between the parties, and particularly described therein, to be approved by Harvey Wilson, the register of this court, in case the parties differ about the same, within thirty days from the service of a copy hereof.

And it is further ordered and decreed, that the said defendant do pay to the complainant the costs of this suit to be taxed, and that the complainant have execution therefor.

And it is further ordered, that in case the amount of the purchase-money hereby decreed to be paid or tendered is not received by the defendant, the same shall be paid into court for his use.

W. H. WELCH,
Chief Justice.

Dated the 13th day of May, A. D. 1854.

To F. R. Bartlett, and Thompson & Parker, solicitors for complainant, and to Harvey Wilson, esqr., clerk of the district court, Washington county.

Yours, &c.

M. E. AMES,
Defendant's Solicitor.

[Endorsed:] District court, 1st judicial district, Washington county. John N. Ahl vs. Roswell B. Johnson. Notice of appeal. Filed June 12, 1854. H. Wilson, clerk. Service of a copy of the within notice of appeal is hereby admitted this 12 day of June, 1854. F. R. Bartlett, and Thompson & Parker, sol'rs for comp't. Service of the within notice of appeal is hereby admitted this 12th day of June, 1854. Harvey Wilson, clerk. M. E. Ames, counsel for def't.

TERRITORY OF MINNESOTA,
County of Washington, ss:

I, Harvey Wilson, clerk of the district court of Washington county in the Territory of Minnesota, do hereby certify that the foregoing is a true copy of original files now remaining in my office; that I have compared the same with the originals and find it a correct transcript therefrom, and of the whole of such originals.

In witness whereof, I have hereunto set my hand, and affixed the [SEAL.] the seal of said court, at Stillwater, this tenth day of December, A. D. 1854.

HARVEY WILSON,
Clerk.

SUPREME COURT OF MIN.

JOHN N. AHL, respondent,
vs.
ROSWELL B. JOHNSON, appellant. } Appeal in chancery.

Points relied upon by the appellant's counsel for a reversal of the decree.

I. That the agreement made on the 15th day of June, 1850, between the parties, and set forth in the bill, and contained in the evidence, was an executory agreement by the defendant to sell and convey the premises therein mentioned, at a future specified time, upon condition of the payment of the consideration-money at the time agreed upon, but no sale was ever made or consummated.

II. That it was the intention of the parties in this case to make the time of payment specified an essential part of the contract to sell, and the time of payment was an essential element by the terms of the agreement, and the agreement is conclusive evidence thereof.

See 7 Paige Ch. Rep., p. 22, Wells vs. Smith.
4 Johnson " " p. 559, Hatch v. Calb.
2 vol. Story's Eq. Juris. p. 96, sec. 771.
1 Johnson Ch. Rep., p. 370, Benedict v. Lynch.

III. That the payment of the whole amount of the consideration money and the interest, at the time it became due, viz: on the first day of May, 1851, was a condition precedent in the agreement to be performed by the complainant at the time specified.

IV. The condition precedent, contained in an agreement to be performed by a party, must be fully performed on his part, and at the time agreed upon, before he is entitled to ask a specific performance of the other party, and without which courts will not compel a specific performance.

See 10 Johnson Rep., p. 203, Cunningham v. Morell.
5 Denio, p. 406, Paige vs. Att.
18 Wendall, p. 187.
13 " p. 258.
8 " p. 615, Slocum vs. Despard.
Chitty on Contracts, (4th Am. ed.) p. 737, 738.
Story on Contracts, (2d ed.) sec. 27, sec. 32.
Same " sec. 633.
2 vol. Blackstone's Com., p. 431.
3 Vesey Rep., p. 692.
Story on Contracts, (2d ed.) sec. 971.

V. That the complainant, having failed and refused to pay the amount of the consideration money, and by such failure and refusal having broken and presumptively abandoned the agreement on his part, is not entitled to have it performed on the part of the defendant.

VI. The complainant, having neglected and peremptorily refused to pay the consideration money for the lot for an unreasonable length of time, after the time fixed for payment by the terms of the agreement, without assigning or showing any excuse or justification for his latches and default, has no equities, is not entitled to have it performed on the part of the defendant, and a court of equity ought not to compel a specific performance, and will not administer relief where there is gross negligence on the part of the complainant.

See 2d Story's Eq. Juris, p. 96, sec. 771.
2 Wheaton's U. S. Rep., p. 336.
2 Summer " " p. 278.
6 Wheaton " " p. 528.
9 Peters " " p. 62.
1 Harrington's Ch. " p. 124 and 128.
6 Johnson " " p. 222.
1 Maddock Rep., p. 423.
1 Johnson Ch. Rep., p. 370.

VII. The possession taken of the premises by the complainant was unauthorized by the agreement, and without the consent of the

defendant, and in fraud of the defendant's rights; therefor the complainant acquired no rights or equities by making improvements thereon.

VIII. No legal or sufficient tender of the purchase money admitted to be due to the defendant is stated in the bill, or proved by the evidence in the cause, and the pretended tender attempted to be proved was coupled with a condition that defeated it.

IX. The pretended tender to the defendant of the balance of the consideration money admitted to be due was subsequently abandoned by the complainant's acts, and the tender has wholly failed, and the complainant lost all benefit from it; and the case stands as if no tender had been made or attempted, because the tender has not been kept good, nor the money paid into court, or placed under its control, and because a subsequent demand of the money tendered has been made by the defendant, and refused by complainant.

See 2d Greenleaf's Evidence, sec. 608.
24 Pickering Rep., p. 168, Town v. Trow.
6 Cowen's Rep., p. 13, Fuller v. Hulbard.

X. The complainant carries into court himself in default, and without offering any excuse, explanation, or justification for his own default, latches, and gross negligence, and is not entitled to any relief or decree in a court of equity.

See 1 Story's Eq. Jurisprudence, p. 78.

AMES & VAN ETTEN,
Att'ys and Sol'rs for Deft. and Appellant.

M. E. AMES,
Of Counsel.

SUPREME COURT,
Territory of Minnesota.

JOHN N. AHL, Respondent,
against
ROSWELL B. JOHNSON, Appellant.

This cause having been brought to a hearing on an appeal from the judgment and decree of the district court, held in and for the county of Washington, in the first judicial district, in the Territory of Minnesota, made and entered in the above-entitled cause, wherein the said John N. Ahl was complainant, and Roswell B. Johnson was defendant; and Mr. M. E. Ames, of counsel for the appellant, and Mr. L. E. Thompson, of counsel for the respondent, having been heard, and the questions brought up by said appeal having been considered,

It is now ordered, adjudged, and decreed by this court, that the judgment and decree of the district court of the county of Wash-

ington aforesaid, to this court appealed from, be and the same is hereby in all things reversed, and the relief prayed for in the complainant's bill of complaint in said cause denied. And it is further ordered, adjudged, and decreed, that the said respondent, John N. Ahl, pay to said appellant, Roswell B. Johnson, the costs of the said cause, both in this court and in the court below, to be taxed, as provided by statute and by rules of court, and that said appellant have judgment therefor in this court. And it is further ordered, that a certified copy of this order be remitted to said district court of Washington county, to be filed with the clerk thereof, to the end that the same may be final in the cause.

A true record. Attest:

GEO. W. PRESCOTT,
Clerk Supreme Court.

A true transcript from the record for the 2d day of February, A. D. 1856, being the 15th day of the January term of said court, A. D. 1856.

Attest: GEO. W. PRESCOTT,
Clerk Supreme Court, Min. Ter.

SUPREME COURT,
Territory of Minnesota.

JOHN N. AHL, Respondent,
against
ROSWELL B. JOHNSON, Appellant.

Appeal from the district court of Washington county.

A final order and decree of court having been made and entered in this cause, on the second day of February, A. D. 1856, reversing the judgment and decree of the court below, and dismissing the bill of complaint, with costs of both courts to the appellant herein:

Now, on motion of Ames & Van Etten, appellant's attorneys, it is hereby adjudged, that Roswell B. Johnson above named recover of John N. Ahl above named the sum of ninety-five dollars and forty cents, costs taxed in this court after notice and hearing.

GEORGE W. PRESCOTT,
Clerk of Supreme Court.

Costs taxed in supreme court.

Supreme court costs	40 60
District court costs	54 80
	$95 40

SUPREME COURT OF THE UNITED STATES.

JOHN N. AHL, Appellant,
vs.
ROSWELL B. JOHNSON, Appellee.

Application of value of property involved on appeal.

TERRITORY OF MINNESOTA,
Washington county, ss:

John N. Ahl, of Stillwater, being duly sworn, says, that he is the appellant above named, and that the value of the property involved in the order and judgment appealed from, exclusive of costs, exceeds one thousand dollars.

JOHN N. AHL.

Sworn to and subscribed before me this 3d day of September, A. D. 1856.

HARVEY WILSON,
Clerk District Court.

[Endorsed:] Supreme Court of the United States. John N. Ahl, appellant, vs. Roswell B. Johnson, appellee. Affidavit of amount involved. Filed Sept. 12, 1856. A. J. Whiting, dept. clerk.

SUPREME COURT OF THE UNITED STATES.

JOHN N. AHL, Appellent,
vs.
ROSWELL B. JOHNSON, Appellee. } On appeal.

To the honorable Moses Sherburne, associate justice of the supreme court of the United States for the Territory of Minnesota:

The application of John N. Ahl, humbly prays your honor for the allowance of an appeal to the Supreme Court of the United States from the order and judgment made and rendered by the supreme court of the Territory of Minnesota, at the January term thereof for 1856, in a certain suit wherein John N. Ahl, the appellant here, was plaintiff, and Roswell B. Johnson, the appellee, was defendant.

COOPER & McMILLAN,
Att'ys for Appellant.

September 8, 1856.

[Endorsed:] Supreme Court of United States. John N. Ahl, appellant, vs. Roswell B. Johnson, appellee. Service of a copy of the within application for allowance of appeal this 12th day of Sep-

tember, A. D. 1856, admitted. M. E. Ames, att'y for appellee. Application for allowance of appeal. Appeal allowed, Sept. 10, 1856. M. Sherburn, judge. Filed Sept 12, 1856. A. J. Whiting, Dept. Clerk. Cooper & McMillan, att'ys for appellant.

SUPREME COURT,
Territory of Minnesota.

JOHN N. AHL, Appellant,
vs.
ROSWELL B. JOHNSON, Appellee. } Notice of appeal.

To Roswell B. Johnson:

Take notice, that the plaintiff in the above-entitled action appeals to the Supreme Court of the United States from the order and judgment made and rendered in said action by the supreme court of the Territory of Minnesota, at the January term of 1856 of said court.

COOPER & McMILLAN,
Att'ys for Appellant.

September 8, 1856.

[Endorsed:] Territory of Minnesota, supreme court. John N. Ahl, appellant, vs. Roswell B. Johnson, appellee. Notice of appeal to Supreme Court of the United States. Service of within notice by copy admitted this 12th day of September, A. D. 1856. M. E. Ames, att'y for appellee. Filed Sept. 12, 1856. A. J. Whiting, dept. clerk. Cooper & McMillan, att'ys for appellant.

SUPREME COURT,
Territory of Minnesota.

I, George W. Prescott, clerk of the above-entitled court, hereby certify the foregoing to be full and true copies of the judgment roll, notice of appeal, affidavit of amount involved, and application for allowance of appeal, in the cause therein entitled, as the same appear on the records and files of said court in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said supreme court this 13th day of November, A. D. 1856. [SEAL.]

GEORGE W. PRESCOTT, *Clerk.*

UNITED STATES OF AMERICA, *ss:*

To Roswell B. Johnson:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the fourth Monday of December next, pursuant to an appeal,

the allowance of which has been filed in the clerk's office of the supreme court of the United States for the Territory of Minnesota, allowed and taken from the order and judgment made and rendered by the court last aforesaid, at the January term of said court for 1856, wherein John N. Ahl is appellant, and you are the appellee, to show cause, if any there be, why the order and judgment appealed from should not be corrected, and speedy justice should not be done to the parties in that behalf.

St. Paul, September 10, 1856.

M. SHERBURNE,
Associate Justice of the Supreme Court U. S. for Territory of Minnesota.

[Endorsed:] Supreme Court of United States. John N. Ahl, appellant, vs. Roswell B. Johnson, appellees. Citation. I admit service of the within citation on me, by copy, Sept. 12, 1856. M. E. Ames, att'y for appellee. Filed Sept. 12, 1856. Geo. W. Prescott, clerk. Cooper & McMillan, att'ys for appellant.